

MARITAL RAPE: A MURDER OF PATIENCE

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Abstract:

“Change your vision, you can change the world”

In the present era, do you still think that rape can be committed by anyone except her husband against her will? This is a big question mark which the Supreme Court needs to enlighten in the interest of saving the life of women.

As the word “rape” looks, it is just reverse to its meaning. This offence is defined in Section-375² of Indian Penal Code and it’s one of the exceptions shows the loopholes in the laws relating to women. Is after the marriage wife has no separate dignity other than her husband? The research paper essentially deals with the interest of women by criminalizing the marital rape, as the women have their separate dignity even after marriage and no one can overshadow that, even not her husband. The husband cannot take use marriage as a ‘*shield*’ to have sexual intercourse with her. The paper also deals with the issues regarding the penalization of the marital rape. Last but not the least, the paper will also discuss about the discussions made in the court in various case laws. At last the paper will conclude with the opinion.

Keywords: Rape, Marriage, Marital Rape, Dignity, Sexual Act.

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²<https://indiankanoon.org/doc/623254/>

Rape:

In the present Era still you think that rape can be committed by anyone except her husband against her will? This is a big question mark which the Supreme Court needs to enlighten in the interest of saving the life of women.

As the word “rape” looks, it is just reverse to its meaning. You might have heard or seen number of cases of rape and in Delhi, a well-developed national capital of India has a trend of this heinous crime. According to the data revealed by the Delhi police³, in 2017 the reported rape cases was an approximately 757 and in May 2018 the same number reaches to 780.

Rape, a most severe offence which is to be mortally scared a woman. The offence is defined in Section - 375 of Indian Penal Code, 1860 and it's one of the exception is that the husband has a right to have sexual intercourse with his own wife above 15 years of age; it can be said as one of the loopholes in the law relating to women.

Marital Rape: Introduction

In simply we define word marital rape “a rape committed after marriage by the husband”. It means the access of husband to the wife without her consent because the people think that the marriage is the sufficient or is an implied consent of wife to access to her or her body. So, as they indulge in lawful wedlock as a husband and wife, the husband creates or gets a right on her life as well as her body.

The binding in knot of marriage shows the implied consent for sex but not for sex forcefully or without her consent, using violence or threatening by the male spouse against a female spouse.

³ <https://www.newsclick.in/rise-reported-rape-cases-2018-police-data-reveals>

Is it really not affected the dignity of women that she has herself not a right to protect her dignity to whom or with she is not feeling comfortable. And it not only the thinking of some people but also the judiciary or the decision making body.

Statistics:

According to the report of “National Family Health Survey (NFHS) -4”⁴ in (2015-16) provided by the Union health ministry that the 83% married women among the age of 15-49 was the victims of sexual abuse by husband. In which the 5.4% women have physical forced by husband to sexual intercourse 4% by using threat and 3% women is forced by husband for other sexual acts.

Wife: A Remote of Husband

As the Exception-2 of Section 375, we can interpret the exception that the ‘remote of the husband’ or ‘the husband is the master of wife’ as it is only the husband who decides or takes all the personal decisions of wife, that when they consumes the marriage or have sexual intercourse with his wife and the wife has no option to refuse even if she is not feeling better or comfortable with the husband or the health of the wife is badly affected i.e. injuries to private parts, depression, fatigue, lacerations, shock, mentally disturbed, abetment to suicide etc. then also at that time, the husband reminded other spouse, her obligations against her husband and then he

⁴ <https://www.livemint.com/Politics/2On0uNbW6ufrjabfKZwPnM/Marital-rape-Survey-takes-lid-off-sexual-violence-by-husban.html>

consumes marriage forcefully or against her will. Is the consent of the wife doesn't matter or there is no importance of the consent of the women?

Three forms of injuries in marital rape

Battering Rape

- Sexual and Physical violence at the same time.

Force-only rape

- Absence of physical violence.

Obsessive or Sadistic rape

- This form includes perverse or torture results to causing physical injuries.

Obligations of wife:

Does always a wife have an obligation or the duties to fulfill against her husband, as the male spouse has no duties or obligation against the female spouse? Although at the time of marriage when both bride and bridegroom make promises where one of the promises is that "they both will respect, love & understand each other and would acquire knowledge, happiness and harmony". Now the point is that where those respect and understanding have gone while doing of such heinous acts with his own wife?

Is Love proved by sexual commitment only?

According to society it to be a criminalize or not, as the access of husband forcefully or without consent or regard to care of the affected health of the women as like grave injuries to their private parts to her body in any way, people say it is love but it cannot be love as love is giving and taking the respect or it can be said that doing of respect and able to understand the feelings of each other but here the man have only the desires to satisfied his wants, it didn't matter to him that how these are being satisfied.

Now question arises in the mind that whether it is only the wife's duty to satisfy the husband's demand of sexual intercourse even if the wife is not comfortable or her life affects badly? Is after the marriage wife has no separate dignity other than her husband?

Meaning & Importance of Law:

Why we need to criminalize the marital rape? Before this, we need to discuss why the laws are made. As in Muslim law there is doctrine of certitude which provides that Allah is the one who furnish that what is bad and good or what is to be done and not to be done by a man. The same as the laws made by the legislature serves the guidelines that in what manner the society needs to behave and it is only the law who protects number of rights of the people.

Before making the laws, the things which need to keep in mind is that, what are in interest of the general public? Then why the laws are not to be constituted in regards of marital rape as in marital rape a man shows his superiority over the wife by forcefully, using violence or by threatening, does this heinous torture on female not show the requirement of law or to criminalizing the marital rape?

- **Issues in Criminalizing Marital Rape:**

“Marital rape is like that women are in the cage and she cannot come out even the cage is without bars”. It means a women suffers the violence of the husband for the sexual intercourse without consent have no option to do anything against a husband for the acts which affects the life of the women, the reason behind this only that the act is not recognizable by law because if she informed to society or the police about the heinous act over them by the husband they are unable to do anything in favor of women as they are bound by law.

The reasons why the marital rape should be an offence or to withdraw the one of the exception of Section 375 of Indian Penal Code which permits the marital rape:

- **Article- 14** - The second exception of Rape, allows a full right to husband to sex with his own wife in Section- 375 of Indian Penal Code, but it violates the rights of women i.e. right to equality under Article -14 of the Indian Constitution which provides that all protection of law to all persons but in marital rape women has no legal protection against the husband and there is no reasonable classification on the basis of marriage, whether the women is married or unmarried, the distinction is made in arbitrary.

Case - State of West Bengal v Anwar Ali Sarkar⁵

⁵AIR (1952) SC 75 (India)

Under this case Supreme Court provided that in Article 14 classification must be a reasonable one and the made must have the nexus with the object want to achieve by the statue but the exception-2 hinders in the purpose of section 375 i.e. to defend the women against the heartless or barbarous acts of the man and also provides a hard punishment to the person engage in such heinous acts.

So, there is no reasonable classification.

- **Article- 15** The same exception of the rape in section 375 also violates the right to no discrimination on the basis of sex or gender to any citizen.
- **Article- 21:** Additionally, second exception of rape violates the right to live with dignity and a healthy life in Article- 21 of constitution because she is forced sexually by her husband without her consent even if she is not feeling better or the health of the wife is affected badly. Here, the women have no option to say ‘no’ to the husband for the consummation of marriage. Is it really, didn’t affects the dignity of the women? But in actual fact it affects terribly to a women then why she is not allowed by the law to fight for the safeguard of their fundamental rights, her dignity and protect their body against these wild animals.

The husband becomes the master of wife and the women needs to go on the way as the husband say, the right was recognized on the first time in the case:-

*Maneka Gandhi v. Union of India*⁶-

⁶1978 AIR 597, 1978 SCR (2) 621

In this case the Supreme Court interprets the Article 21 in such a manner which gave a new direction that the right to life is not only limited to a physical existence of a person but the same also includes the right to life with human dignity.

*SuchitaSrivastava v. Chandigarh Administration*⁷

In this case Supreme Court under article 21 of the Indian Constitution, “equalize the right to make choices relating to a sexual acts with the rights to bodily integrity, privacy, life and personal liberty”⁸.

Marital rape also violates the right to privacy as firstly recognized in the case *Justice KS Puttaswamyv. Union of India*.⁹

- Marital rape may Abets a women to suicideas the women has no option to complain against these involuntarily sexual intercourse, forcefully and without her consent, to his family, society due to non-acceptance by the society or because of societal compulsion and can't go to police as it is not recognized by the law. Then the thing to think that, where the women have to go then they thought that they have only the option either to accept this life or to end his life and it makes a impossible to a dignified women to lead this unhappily life or the life which only and only gave the pain, hurt, harm or harmony to the life.

⁷(2008) 14 SCR 989 (India)

⁸<https://www.legalbites.in/law-notes-constitution-right-to-equality-under-article-14-of-constitution/>

⁹WRIT PETITION (CIVIL) NO 494 OF 2012

- **Rape is Rape** - Is there any difference between rape and marital rape except married? It is immaterial that the women is married or unmarried, the main fact is the consent of women because the women is not the property of anyone i.e. *before marriage, father's property and after the husband's*, that, in what way you want to use, you can use.

If the mindset of the husband change towards their wife, as if the husband starts to include his wife as a wife, that have her own identity, dignity, respect and the husband also realizes that she also feels pain as like the normal human being or replacing her character a husband's property then you can imagine a situation, how it will greatly affect the society in a positive manner. It's directly results to decrease in the rate of marital rape in the society. It shows that we need to create awareness among the people and the work of creating awareness among the people is not only of law it is the duty of each and every single citizen of the country.

However the "rape is rape" it is immaterial the victim or the sufferer is married or unmarried. So, we can say that the women will get justice?

- **Marriage -A mistake of life** - The question arises concerning to such women that where they will go or they need to spend her whole life in this hell or is it the punishment of the marriage or the marriage is the biggest mistake of life of a women? If women's got justice in this matter then of course we can proudly say, that, in our country also, law gave a full justice to women as in many other countries.

- *Case – RIT Foundation Vs. Union of India*¹⁰

Under this case, the petition is filed by the RIT Foundation and All India Democratic Women's Association who challenges the constitutionality of Exception-2 of Section 375 of Indian Penal Code;

Here, the bench of Honb'le High court of Delhi provides the reasons for not criminalization of maritalrape:

1. If it is criminalizing then it will result to destabilize the marital relation between husband and wife.
2. Criminalization made the violation of right to privacy i.e. allowing the state into the four walls of bedroom.
3. Sexual intercourse after marriage in not amount to sex.
4. And, it will become a way of harassing man by the unprincipled wives.

The court arguments that marital rape is not criminalize due to destabilize of relation of husband and wife but one thing is also that if there is no respect, trust, harmony among the spouses then there is no meaning to live together only for formality and with regard to destabilize of relation, there are number of laws who discharge the spouses from the marriage as now the marriage not remain a sacrament in nature. So, it is not the good excuse of criminalizing the marital rape i.e. overburden of judiciary or increase the rate of abrogation of the 'sacrosanct' character of marriage is also not relevant one. Because now the marriage not remain in sacrament in nature as the availability of the number of grounds of divorce and the fear of court of misuse of law.

¹⁰ W.P (C) No. 284/2015 (India)

In the same case the court was also argued that if the law or the provisions will be made in favor of marital rape then it will definitely be used for harassing of the husband by the wife, but practically it is not the justified reasons of the court because it is common that as the same coin has two faces similarly law made for the interest of the general public always have disadvantage with a number of advantages.

CASE: Independent Thought vs. Union of India¹¹ –

Independent Thought a registered society work for the prevention of child rights. The society raises an issue in favor of child rights in the Supreme Court. i.e. the society challenges that the sexual intercourse by a husband with his wife (15-18) years of age amounts to rape. In this case society also challenges the inconsistency of the minimum age of consent, marriage and age provided in Exception 2 of section 375 of Indian Penal Code. Here, the society argues that if the women below the age of 18 are able to sexual intercourse according to Exception 2, it means she gets enough majority then why she is not allowed to marry, to enter into a contract, why the minimum age of majority is provided 18 years.

On 11th October, 2017 the division bench of the Supreme Court provide the landmark judgment in favor of the petitioner that the age provided in exception 2 of section 375 i.e. 15 is substituted to 18. It means sexual intercourse by a husband with his wife (15-18) years of age amounts to rape.

¹¹(2017) 10 SCC 800

<https://lawnn.com/independent-thought-vs-union-of-india/>

But in this case court didn't consider the 'Marital Rape' in their discussion.

- ***Bill introduced in Parliament¹²:***

The private Bill i.e. "Women's Sexual, Reproductive and Menstrual Rights Bill 2018" has introduced in parliament by the Dr. ShashiTharoor, Congress M.P for the purpose of criminalizes the marital rape. The bill also aims to unconstitutional of exception 2 of Rape in Section 375 of Indian Penal Code.

- ***PIL - make marital rape as a ground of divorce¹³***

Recently a PIL has been filed by an Advocate AnujaKapur in the Supreme Court, she contended that clear directions be provided to the central government for framing the guidelines in the interest of the victims of marital rape by allowing the registration of FIRsto the victims of marital rape and make it as a ground of divorce.

These are the some of the steps trying to moving towards the attaining of the heights.

But still the position is same, the criminalization of marital rape is a distant dream; it has failed to criminalize the marital rape as offence or the removal of Exception- 2 of Section- 375 of Indian Penal Code.

¹²<https://www.livewlaw.in/news-updates/shashi-tharoors-bill-seeks-to-make-marital-rape-a-crime-141823>

¹³The Tribune, Mar. 30, 2019.

<https://www.tribuneindia.com/news/nation/pil-in-sc-seeks-guidelines-to-penalise-marital-rape-make-it-ground-for-divorce/750779.html>

Conclusion;

This paper is a satire on the law of our country because if any person in any corner of the world is having the partial law or don't have law which can cure his problem then we can't say that our country's laws provide justice to all.

Marital Rape, a big offence in many countries, is still not an offence in India and even not a ground of divorce. At present also, the situation is same there is no difference came in present time also, that marital rape is not an offence as like the same continuing from the past.

How proudly we say that India is our mother and how shameful it is that to whom we consider mother, we don't even respect her feelings rather we condemn it.

Even in the 21st century, our society is male dominant and due to this people take unfair advantage of their power. We are not talking about all the male people in the country, our main motive is to make such people realise about their wrong doing and also to change their mentality.

In India even after the society become more educated in comparison to prior, there is no law which deals with this heinous act and the most surprising part is that Exception 2 of Section 375 of Indian Penal Code allowed a man to marital rape. This may promotes such type of acts.

Sometimes the mother of the victim also don't understand her pain and misery and console her by saying that she is your husband but she don't understand the actual thing which the daughter wants to convey to her mother.

In this situation where a women go! As she is sexually assaulted by husband multiple times then she have no option other than to commit suicide.

But can we actually consider it as a suicide? NO, it is a MURDER; it's a murder of her patience, her feelings, murder of the pious vow, emotions which leads her to take such a hard step. *'It's high time that we realize the need to solve this problem at the root level'*, There is a great need to make such laws which helps to protect the taking of such incredible step of women so that they don't feel alone and isolated and can feel a sense of satisfaction. And then we can say that India's law is doing justice with all.

'We always pretend that it is the society which is responsible for such acts but we forget the thing that we are also the part of same society'.